

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

JOSHUA PARKS,

Plaintiff,

vs.

NORDEX USA, INC.; ACCIONA ENERGY
USA GLOBAL LLC; BRUENNING'S BREEZE
WIND FARM, LLC; IEA CONSTRUCTORS
LLC; E.ON CLIMATE & RENEWABLES
NORTH AMERICA, LLC; 3M and CAPITAL
SAFETY LLC; AND AXIS RENEWABLE
GROUP

Defendants.

CIVIL ACTION NO. 1:19-CV-222

**DEFENDANTS 3M COMPANY and CAPITAL SAFETY, LLC'S
INITIAL DISCLOSURES PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1)**

Pursuant to Federal Rule of Civil Procedure 26(a)(1), Defendants 3M Company and Capital Safety, LLC¹ (collectively "Defendants" or "3M") provide the following initial disclosures, subject to and without waiving the following:

- a. All objections as to competency, relevancy, materiality, privilege, including work-product, and admissibility as evidence for any purpose of the documents referred to or responses given, or the subject matter thereof in any subsequent proceeding in, or any trial of, this action or any other proceeding;

¹ Capital Safety, LLC is not an existing legal entity.

- b. The right to object to other discovery procedures involving or relating to the subject matter of the requests herein responded to; and
- c. The right at any time to revise, correct, add to or clarify any of the documents identified or the responses set forth herein.

INTRODUCTORY STATEMENT

These initial disclosures are made in good faith by 3M based upon information reasonably available at this time without the benefit of significant investigation or discovery. 3M reserves the right to supplement these disclosures if subsequent investigation reveals additional information or the need for revisions to the information disclosed. In particular, these disclosures should not be construed to limit 3M's ability to later identify individuals with knowledge of relevant facts or documents as they become known through investigation and discovery.

INITIAL DISCLOSURES

A. Individuals who may have discoverable and/or relevant information

- 1. Plaintiff Joshua Parks, c/o counsel. It is expected that Mr. Parks has personal knowledge of his claims, the products at issue, and the damages he has allegedly sustained.
- 2. Family members, if any, who Plaintiff may contend may have knowledge of his physical condition.
- 3. Plaintiff's coworkers Erick Benavides, Dusty Nyonee, Tim Martinez, Bob Forbes, Kent Powers, and Max Stoltz who may have been present on the date of the incident, may have knowledge or information regarding the conditions present on the wind tower on the date of the incident, the product at issue, Mr. Parks' conduct, and knowledge of the events leading up to the incident.

4. Brent Berentson and Plaintiff's supervisor, Ian Price. Mr. Price and Mr. Berentson investigated this incident and it is expected that they may have knowledge of Mr. Park's training and working conditions.

5. Any of Mr. Parks' other coworkers or individuals who assisted in Mr. Parks' rescue, cleaned up after the incident, and/or investigated the incident.

6. Bronson Ellis and Tayler Burett. Mr. Ellis and Mr. Burett signed a training sheet for Mr. Parks, and it is expected that they may have knowledge of Mr. Parks' safety training.

7. Healthcare providers and treating healthcare professionals of Mr. Parks, as identified in his medical records and/or responses to discovery, including but not limited to the employees, agents, and/or independent contractors of Valley Baptist Medical Center and other healthcare providers or health professionals who treated Mr. Parks immediately after the incident, before the incident and subsequent to the incident. It is expected that these individuals will have personal knowledge of the medical care and treatment provided to Mr. Parks.

8. Employees, agents, and/or independent contractors of Defendant Axis Renewable Group. It is expected that these individuals may have knowledge of Mr. Parks' training, work history, and circumstances surrounding the incident, including the equipment involved.

9. Employees, agents, and/or independent contractors of Defendants Nordex, USA, Inc.; Acciona Energy USA Global LLC; and Bruenning's Breeze Wind Farm, LLC. It is expected that these individuals may have knowledge of the premises.

10. Employees, agents, and/or independent contractors of Skylotec may have knowledge of the Skylotec Fall Arrest equipment Mr. Parks was using on the day of the incident.

11. Dave Schlangen, New Products Manager at D B Industries, LLC, has knowledge or information regarding the design, development, testing, manufacturing, and use of the product

at issue, and the product's compliance with all applicable standards and regulations. Mr. Schlangen may be contacted through counsel only.

B. The identity of documents and tangible things in the possession, custody, or control of 3M

3M's investigation into the facts and circumstances that surround the events as described in Plaintiff's Third Amended Petition is ongoing. Subject to that limitation, the following are documents, electronically stored information, or tangible things, including some that 3M has in its possession, custody, or control that 3M may use to support its defenses:

1. Documents related to the DBI-SALA Lad-Saf X2 Sleeve; Serial No. 075334, including but not limited to manufacturing records, design records, parts lists, compliance records, and instructions for use/user manual.
2. Records, incident reports, notes, descriptions, and memoranda concerning Mr. Parks, Axis Renewable Group and Nordex Group, including, but not limited to, the records, incident reports, notes, descriptions, and memoranda as obtained through discovery, these initial disclosures, subpoenas or authorizations, which are not currently in 3M's possession.
3. All documents, records and tangible things produced by Plaintiff and other Defendants pursuant to discovery requests, which are not currently in 3M's possession.
4. Records received from OSHA in response to FOIA or other requests.
5. Mr. Parks' medical records and medical bills, as obtained through discovery, subpoenas, or medical authorizations, including but not limited to Mr. Parks' medical records and medical bills from all treating physicians and medical facilities, which are not currently in 3M's possession.

Confidential and proprietary documents and information will be produced pursuant to a Court approved Protective Order.

C. Damages

3M does not currently seek an award of damages in this action. However, it reserves its right to seek an award of costs at the conclusion of this action.

D. Insurance

Defendant 3M is self-insured up to an amount sufficient to cover Plaintiff's alleged damages.

E. Reservations

In addition to the above-described witnesses and documents, 3M reserves its right to conduct investigation and discovery in order to obtain relevant documents to its defense that may be in the possession, custody and/or control of various third parties. Furthermore, 3M reserves its right to amend these disclosures as such information is discovered.

Respectfully submitted,

ROERIG, OLIVEIRA & FISHER, LLP

By: /s/ David G. Oliveira
David G. Oliveira
Federal ID No. 34165
State Bar No. 15254675
10225 N. 10th Street
McAllen, Texas 78504
Telephone: 956-393-6300
Telecopy: 956-386-1625
Email: doliveira@rofllp.com

BLACKWELL BURKE P.A.

Deborah E. Lewis
State Bar No. 12275232
431 South Seventh Street, Suite 2500
Minneapolis, MN 55415
Telephone: (612) 343-3200
Telecopy: (612) 343-3205
E-mail: dlewis@blackwellburke.com

-and-

THOMPSON, COE, COUSINS & IRONS, L.L.P.

Zandra E. Foley
Southern District I.D. No. 632778
State Bar No. 24032085
Steven M. Augustine
Southern District I.D. No. 1467860
State Bar No. 24064845
One Riverway, Suite 1400
Houston, TX 77056
Telephone: (713) 403-8200
Telecopy: (713) 403-8299
Email: zfoley@thompsoncoe.com

**ATTORNEYS FOR DEFENDANTS
3M COMPANY and CAPITAL SAFETY, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2020 the foregoing document was served via the Court's CM/ECF system to all attorneys of record.

*/s/*David G. Oliveira
David G. Oliveira